

**HEALTH REFORM - HEALTH INSURANCE
COVERAGE IN STATE CONTRACTS**

2009 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill requires certain state entities to require a contractor who contracts with the state entity to offer the contractor's employees qualified health insurance coverage during the duration of the contract if the contract is over a certain amount, and if the contract is a construction or design contract

Highlighted Provisions:

This bill:

- ▶ defines the following terms:
 - "employee";
 - "qualified health insurance coverage"; and
 - "subcontractor";
- ▶ requires the following state entities to require a contractor who contracts with the state entity to offer qualified health insurance coverage to the contractor's eligible employees and the employee's dependents if the contract amount is above a certain amount:
 - the Department of Environmental Quality;
 - the Capitol Preservation Board;
 - the Department of Natural Resources;
 - the Division of Facilities Construction and Management;
 - the Utah Department of Transportation; and
 - public transit districts;
- ▶ establishes enforcement and penalties for a contractor who does not maintain an offer of qualified health insurance coverage for employees during the duration of the contract;
- ▶ deposits any penalties collected into the Medicaid Restricted Account; and

32 ▶ this bill applies to construction or design contracts entered into on or after July 1,
33 2009.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **17B-2a-818**, as last amended by Laws of Utah 2008, Chapter 382

41 **26-18-402**, as last amended by Laws of Utah 1998, Chapter 360

42 **63A-5-205**, as last amended by Laws of Utah 2008, Chapter 382

43 ENACTS:

44 **17B-2a-818.5**, Utah Code Annotated 1953

45 **19-1-206**, Utah Code Annotated 1953

46 **63-34-22**, Utah Code Annotated 1953

47 **63C-9-403**, Utah Code Annotated 1953

48 **72-6-107.5**, Utah Code Annotated 1953

49

50 *Be it enacted by the Legislature of the state of Utah:*

51 Section 1. Section **17B-2a-818** is amended to read:

52 **17B-2a-818. Requirements applicable to public transit district contracts.**

53 (1) If the expenditure required to construct district facilities or works exceeds:

54 (a) \$25,000, the construction shall be let as provided in Title 63G, Chapter 6, Utah

55 Procurement Code[-]; and

56 (b) \$500,000, the construction shall be let as provided in:

57 (i) Title 63G, Chapter 6, Utah Procurement Code; and

58 (ii) Section 17B-2a-818.5.

59 (2) (a) The board of trustees of a public transit district shall advertise each bid or

60 proposal through public notice as the board determines.

61 (b) A notice under Subsection (2)(a) may:

62 (i) include publication in:

(A) a newspaper of general circulation in the district;

(B) a trade journal; or

(C) other method determined by the board; and

(ii) be made at least once, not less than ten days before the expiration of the period within which bids or proposals are received.

(3) (a) The board of trustees may, in its discretion:

(i) reject any or all bids or proposals; and

(ii) readvertise or give notice again.

(b) If, after rejecting bids or proposals, the board of trustees determines and declares by a two-thirds vote of all members present that in the board's opinion the supplies, equipment, and materials may be purchased at a lower price in the open market, the board may purchase the supplies, equipment, and materials in the open market, notwithstanding any provisions requiring contracts, bids, proposals, advertisement, or notice.

(4) The board of trustees of a public transit district may let a contract without advertising for or inviting bids if:

(a) the board finds, upon a two-thirds vote of all members present, that a repair, alteration, or other work or the purchase of materials, supplies, equipment, or other property is of urgent necessity; or

(b) the district's general manager certifies by affidavit that there is only one source for the required supplies, equipment, materials, or construction items.

(5) If a public transit district retains or withholds any payment on a contract with a private contractor to construct facilities under this section, the board shall retain or withhold and release the payment as provided in Section 13-8-5.

Section 2. Section **17B-2a-818.5** is enacted to read:

17B-2a-818.5. Contracting Powers of public transit districts- health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who works at least 30 hours per calendar week.

(b) "First tier subcontractor" has the meaning as provided in Section 63A-5-208.

(c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(d) "Qualified health insurance coverage" means a health benefit plan:

(i) that provides coverage actuarially equivalent to:

(A) coverage required for qualification for participation in a premium assistance plan offered under Title 26, Chapter 18, Medical Assistance Act; or

(B) a benefit plan with the largest insured commercial enrollment offered by a health maintenance organization in the state as determined by the Children's Health Insurance Program under Section 26-40-106; and

(ii) in which the employer pays at least 50% of the premium for the employee and the dependents of the employee.

(e) "Subcontractor" has the meaning provided for in Section 63A-5-208.

(2) Except as provided in Subsection (3), this section applies to all contracts entered into by the public transit district on or after July 1, 2009, if:

(a) the contract is for design or construction; and

(b) (i) the prime contract is in the amount of \$500,000 or greater; or

(ii) a subcontract is in the amount of \$500,000 or greater.

(3) This section does not apply if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit district that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the public transit district that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the

employee's dependents during the duration of the contract.

(c) A contractor or subcontractor who fails to meet the requirements of this section during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the public transit district under Subsection (6).

(6) The public transit district shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which establish:

(a) the requirements and procedures a contractor must follow to demonstrate to the public transit district compliance with this section; and

(b) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(i) a three month suspension of the contractor or subcontractor from entering into future contracts with the public transit district upon the first violation;

(ii) a six month suspension of the contractor or subcontractor from entering into future contracts with the public transit district upon the second violation;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract.

(c) (i) In addition to the penalties imposed under Subsection (6)(b), a contractor or subcontractor who violates the provisions of this section shall be liable to the employee for health care costs not covered by insurance.

(ii) An employee has a private right of action against an employer to enforce the provisions of Subsection (6)(c).

(7) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(8) The failure of a contractor or subcontractor to provide health insurance as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,

Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

Section 3. Section **19-1-206** is enacted to read:

19-1-206. Contracting powers of department -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who works at least 30 hours per calendar week.

(b) "First tier subcontractor" has the meaning as provided in Section 63A-5-208.

(c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(d) "Qualified health insurance coverage" means a health benefit plan:

(i) that provides coverage actuarially equivalent to:

(A) coverage required for qualification for participation in a premium assistance plan offered under Title 26, Chapter 18, Medical Assistance Act; or

(B) a benefit plan with the largest insured commercial enrollment offered by a health maintenance organization in the state as determined by the Children's Health Insurance Program under Section 26-40-106; and

(ii) in which the employer pays at least 50% of the premium for the employee and the dependents of the employee.

(e) "Subcontractor" has the meaning provided for in Section 63A-5-208.

(2) Except as provided in Subsection (3), this section applies to all contracts entered into by or delegated to the department or a division or board of the department on or after July 1, 2009, if:

(a) the contract is for design or construction; and

(b) (i) the prime contract is in the amount of \$500,000 or greater; or

(ii) a subcontract is in the amount of \$500,000 or greater.

(3) This section does not apply to contracts entered into by the department or a division or board of the department if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract or agreement is between:

187 (i) the department or a division or board of the department; and

188 (ii) (A) another agency of the state;

189 (B) the federal government;

190 (C) another state;

191 (D) an interstate agency;

192 (E) a political subdivision of this state; or

193 (F) a political subdivision of another state;

194 (c) the executive director determines that applying the requirements of this section to a
195 particular contract interferes with the effective response to an immediate health and safety
196 threat from the environment; or

197 (d) the contract is:

198 (i) a sole source contract; or

199 (ii) an emergency procurement.

200 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
201 or a modification to a contract, when the contract does not meet the initial threshold required
202 by Subsection (2).

203 (b) A person who intentionally uses change orders or contract modifications to
204 circumvent the requirements of Subsection (2) is guilty of an infraction.

205 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
206 director that the contractor has and will maintain an offer of qualified health insurance
207 coverage for the contractor's employees and the employee's dependents during the duration of
208 the contract.

209 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
210 demonstrate to the executive director that the subcontractor has and will maintain an offer of
211 qualified health insurance coverage for the subcontractor's employees and the employee's
212 dependents during the duration of the contract.

213 (c) A contractor or subcontractor who fails to comply with this section during the
214 duration of the contract is subject to penalties in accordance with administrative rules adopted
215 by the department under Subsection (6).

216 (6) The department shall adopt administrative rules in accordance with Title 63G,
217 Chapter 3, Utah Administrative Rulemaking Act, which establish:

218 (a) the requirements and procedures a contractor must follow to demonstrate to the
219 executive director compliance with this section; and

220 (b) the penalties that may be imposed if a contractor or subcontractor intentionally
221 violates the provisions of this section, which may include:

222 (i) a three month suspension of the contractor or subcontractor from entering into
223 future contracts with the state upon the first violation;

224 (ii) a six month suspension of the contractor or subcontractor from entering into future
225 contracts with the state upon the second violation;

226 (iii) an action for debarment of the contractor or subcontractor in accordance with
227 Section 63G-6-804 upon the third or subsequent violation; and

228 (iv) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
229 of the amount necessary to purchase qualified health insurance coverage for an employee and
230 the dependents of an employee of the contractor or subcontractor who was not offered qualified
231 health insurance coverage during the duration of the contract.

232 (c) (i) In addition to the penalties imposed under Subsection (6)(b), a contractor or
233 subcontractor who violates the provisions of this section shall be liable to the employee for
234 health care costs not covered by insurance.

235 (ii) An employee has a private right of action against an employer to enforce the
236 provisions of Subsection (6)(c).

237 (7) Any penalties imposed and collected under this section shall be deposited into the
238 Medicaid Restricted Account created in Section 26-18-402.

239 (8) The failure of a contractor or subcontractor to provide health insurance as required
240 by this section:

241 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
242 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
243 Legal and Contractual Remedies; and

244 (b) may not be used by the procurement entity or a prospective bidder, offeror or
245 contractor as a basis for any action or suit that would suspend, disrupt or terminate the design
246 or construction.

247 Section 4. Section **26-18-402** is amended to read:

248 **26-18-402. Medicaid Restricted Account.**

(1) There is created a restricted account in the General Fund known as the Medicaid Restricted Account.

(2) (a) ~~Any~~ The following shall be deposited into the Medicaid Restricted Account:

(i) any general funds appropriated to the department for the state plan for medical assistance or for the Division of Health Care Financing that are not expended by the department in the fiscal year for which the general funds were appropriated and which are not otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account[-]; and

(ii) any penalties imposed and collected under:

(A) Section 17B-2a-818.5;

(B) Section 19-1-206;

(C) Section 63-34-22;

(D) Section 63A-5-205;

(E) Section 63C-9-403; or

(F) Section 72-6-107.5.

(b) The account shall earn interest and all interest earned shall be deposited into the account.

(c) The Legislature may appropriate monies in the restricted account to fund programs that expand medical assistance coverage and private health insurance plans to low income persons who have not traditionally been served by Medicaid, including the Utah Children's Health Insurance Program created in Chapter 40.

Section 5. Section **63-34-22** is enacted to read:

63-34-22. Contracting powers of department -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who works at least 30 hours per calendar week.

(b) "First tier subcontractor" has the meaning as provided in Section 63A-5-208.

(c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(d) "Qualified health insurance coverage" means a health benefit plan:

(i) that provides coverage actuarially equivalent to:

(A) coverage required for qualification for participation in a premium assistance plan offered under Title 26, Chapter 18, Medical Assistance Act; or

(B) a benefit plan with the largest insured commercial enrollment offered by a health maintenance organization in the state as determined by the Children's Health Insurance Program under Section 26-40-106; and

(ii) in which the employer pays at least 50% of the premium for the employee and the dependents of the employee.

(e) "Subcontractor" has the meaning provided for in Section 63A-5-208.

(2) Except as provided in Subsection (3), this section applies to all contracts entered into by, or delegated to the department or a division, board, or council of the department on or after July 1, 2009 if:

(a) the contract is for design or construction; and

(b) (i) the prime contract is in the amount of \$500,000 or greater; or

(ii) a subcontract is in the amount of \$500,000 or greater.

(3) This section does not apply to contracts entered into by the department or a division, board or council of the department if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract or agreement is between:

(i) the department or a division, board or council of the department; and

(ii) (A) another agency of the state;

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state; or

(c) the contract or agreement is:

(i) for the purpose of disbursing grants or loans authorized by statute;

(ii) a sole source contract; or

(iii) an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to

311 circumvent the requirements of Subsection (2) is guilty of an infraction.

312 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
313 that the contractor has and will maintain an offer of qualified health insurance coverage for the
314 contractor's employees and the employee's dependents during the duration of the contract.

315 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
316 shall demonstrate to the department that the subcontractor has and will maintain an offer of
317 qualified health insurance coverage for the subcontractor's employees and the employee's
318 dependents during the duration of the contract.

319 (c) A contractor or subcontractor who fails to meet the requirements of this section
320 during the duration of the contract is subject to penalties in accordance with administrative
321 rules adopted by the department under Subsection (6).

322 (6) The department shall adopt administrative rules in accordance with Title 63G,
323 Chapter 3, Utah Administrative Rulemaking Act, which establish:

324 (a) the requirements and procedures a contractor must follow to demonstrate
325 compliance with this section to the department; and

326 (b) the penalties that may be imposed if a contractor or subcontractor intentionally
327 violates the provisions of this section, which may include:

328 (i) a three month suspension of the contractor or subcontractor from entering into
329 future contracts with the state upon the first violation;

330 (ii) a six month suspension of the contractor or subcontractor from entering into future
331 contracts with the state upon the second violation;

332 (iii) an action for debarment of the contractor or subcontractor in accordance with
333 Section 63G-6-804 upon the third or subsequent violation; and

334 (iv) monetary penalties which may not exceed 50% of the amount necessary to
335 purchase qualified health insurance coverage for an employee and a dependent of an employee
336 of the contractor or subcontractor who was not offered qualified health insurance coverage
337 during the duration of the contract.

338 (7) (a) In addition to the penalties imposed under Subsection (6), a contractor or
339 subcontractor who violates the provisions of this section shall be liable to the employee for
340 health care costs not covered by insurance.

341 (b) An employee has a private right of action against an employer to enforce the

provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide health insurance as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

Section 6. Section **63A-5-205** is amended to read:

63A-5-205. Contracting powers of director -- Retainage -- Health insurance coverage.

(1) As used in this section[~~,"capital developments" and "capital improvements" have~~]:

(a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

(b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

(c) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who works at least 30 hours per calendar week.

(d) "First tier subcontractor" has the meaning as provided in Section 63A-5-208.

(e) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(f) "Qualified health insurance coverage" means a health benefit plan:

(i) that provides coverage actuarially equivalent to:

(A) coverage required for qualification for participation in a premium assistance plan offered under Title 26, Chapter 18, Medical Assistance Act; or

(B) a benefit plan with the largest insured commercial enrollment offered by a health maintenance organization in the state as determined by the Children's Health Insurance Program under Section 26-40-106; and

(ii) in which the employer pays at least 50% of the premium for the employee and the dependents of the employee.

(g) "Subcontractor" has the meaning provided for in Section 63A-5-208.

(2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director may:

(a) subject to Subsection (3), enter into contracts for any work or professional services which the division or the State Building Board may do or have done; and

(b) as a condition of any contract for architectural or engineering services, prohibit the architect or engineer from retaining a sales or agent engineer for the necessary design work.

(3) (a) Except as provided in Subsection (3)(b) this Subsection (3) applies to all contracts entered into by the division or the State Building Board on or after July 1, 2009, if:

(i) the contract is for design or construction; and

(ii) (A) the prime contract is in the amount of \$500,000 or greater; or

(B) a subcontract is in the amount of \$500,000 or greater.

(b) This Subsection (3) does not apply:

(i) if the application of Subsection (3) jeopardizes the receipt of federal funds;

(ii) if the contract is a sole source contract;

(iii) if the contract is an emergency procurement; or

(iv) to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the threshold required by Subsection (3)(a).

(c) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

(d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents.

(ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor shall demonstrate to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents.

(e) A contractor or subcontractor who fails to meet the requirements of this Subsection (3) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(f) The division shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which establish:

(i) the requirements and procedures a contractor must follow to demonstrate to the

404 director compliance with this Subsection (3); and

405 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
406 violates the provisions of this Subsection (3), which may include:

407 (A) a three month suspension of the contractor or subcontractor from entering into
408 future contracts with the state upon the first violation;

409 (B) a six month suspension of the contractor or subcontractor from entering into future
410 contracts with the state upon the second violation;

411 (C) an action for debarment of the contractor or subcontractor in accordance with
412 Section 63G-6-804 upon the third or subsequent violation; and

413 (D) monetary penalties which may not exceed 50% of the amount necessary to
414 purchase qualified health insurance coverage for an employee and the dependents of an
415 employee of the contractor or subcontractor who was not offered qualified health insurance
416 coverage during the duration of the contract.

417 (g) (i) In addition to the penalties imposed under Subsection (6)(b), a contractor or
418 subcontractor who violates the provisions of this section shall be liable to the employee for
419 health care costs not covered by insurance.

420 (ii) An employee has a private right of action against an employer to enforce the
421 provisions of Subsection (6)(c).

422 (h) Any penalties imposed and collected under this section shall be deposited into the
423 Medicaid Restricted Account created by Section 26-18-402.

424 (i) The failure of a contractor or subcontractor to provide health insurance as required
425 by this section:

426 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
427 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
428 Legal and Contractual Remedies; and

429 (ii) may not be used by the procurement entity or a prospective bidder, offeror or
430 contractor as a basis for any action or suit that would suspend, disrupt or terminate the design
431 or construction.

432 [~~(3)~~] (4) The judgment of the director as to the responsibility and qualifications of a
433 bidder is conclusive, except in case of fraud or bad faith.

434 [~~(4)~~] (5) The division shall make all payments to the contractor for completed work in

accordance with the contract and pay the interest specified in the contract on any payments that are late.

~~[(5)]~~ (6) If any payment on a contract with a private contractor to do work for the division or the State Building Board is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

Section 7. Section **63C-9-403** is enacted to read:

63C-9-403. Contracting power of executive director -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who works at least 30 hours per calendar week.

(b) "First tier subcontractor" has the meaning as provided in Section 63A-5-208.

(c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(d) "Qualified health insurance coverage" means a health benefit plan:

(i) that provides coverage actuarially equivalent to:

(A) coverage required for qualification for participation in a premium assistance plan offered under Title 26, Chapter 18, Medical Assistance Act; or

(B) a benefit plan with the largest insured commercial enrollment offered by a health maintenance organization in the state as determined by the Children's Health Insurance Program under Section 26-40-106; and

(ii) in which the employer pays at least 50% of the premium for the employee and the dependents of the employee.

(e) "Subcontractor" has the meaning provided for in Section 63A-5-208.

(2) Except as provided in Subsection (3), this section applies to all contracts entered into by the board or on behalf of the board on or after July 1, 2009, if:

(a) the contract is for design or construction; and

(b) (i) the prime contract is in the amount of \$500,000 or greater; or

(ii) a subcontract is in the amount of \$500,000 or greater.

(3) This section does not apply if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the contract.

(c) A contractor or subcontractor who fails to meet the requirements of this section during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (6).

(6) The division shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which establish:

(a) the requirements and procedures a contractor must follow to demonstrate to the executive director compliance with this section; and

(b) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(i) a three month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(ii) a six month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage

during the duration of the contract.

(c) (i) In addition to the penalties imposed under Subsection (6)(b), a contractor or subcontractor who violates the provisions of this section shall be liable to the employee for health care costs not covered by insurance.

(ii) An employee has a private right of action against an employer to enforce the provisions of Subsection (6)(c).

(7) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(8) The failure of a contractor or subcontractor to provide health insurance as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

Section 8. Section **72-6-107.5** is enacted to read:

72-6-107.5. Construction of improvements of highway -- Contracts -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who works at least 30 hours per calendar week.

(b) "First tier subcontractor" has the meaning as provided in Section 63A-5-208.

(c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(d) "Qualified health insurance coverage" means a health benefit plan:

(i) that provides coverage actuarially equivalent to:

(A) coverage required for qualification for participation in a premium assistance plan offered under Title 26, Chapter 18, Medical Assistance Act; or

(B) a benefit plan with the largest insured commercial enrollment offered by a health maintenance organization in the state as determined by the Children's Health Insurance Program under Section 26-40-106; and

(ii) in which the employer pays at least 50% of the premium for the employee and the dependents of the employee.

(e) "Subcontractor" has the meaning provided for in Section 63A-5-208.

(2) Except as provided in Subsection (3), this section applies to all contracts entered into by the department on or after July 1, 2009 for construction or design of highways if:

(a) the prime contract is in the amount of \$500,000 or greater; or

(b) a subcontract is in the amount of \$500,000 or greater.

(3) This section does not apply if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall demonstrate to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the contract.

(c) A contractor or subcontractor who fails to meet the requirements of this section during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(6) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which establish:

(a) the requirements and procedures a contractor must follow to demonstrate to the department compliance with this section; and

(b) the penalties that may be imposed if a contractor or subcontractor intentionally

559 violates the provisions of this section, which may include:

560 (i) a three month suspension of the contractor or subcontractor from entering into

561 future contracts with the state upon the first violation;

562 (ii) a six month suspension of the contractor or subcontractor from entering into future

563 contracts with the state upon the second violation;

564 (iii) an action for debarment of the contractor or subcontractor in accordance with

565 Section 63G-6-804 upon the third or subsequent violation; and

566 (iv) monetary penalties which may not exceed 50% of the amount necessary to

567 purchase qualified health insurance coverage for an employee and a dependent of the employee

568 of the contractor or subcontractor who was not offered qualified health insurance coverage

569 during the duration of the contract.

570 (c) (i) In addition to the penalties imposed under Subsection (6)(b), a contractor or

571 subcontractor who violates the provisions of this section shall be liable to the employee for

572 health care costs not covered by insurance.

573 (ii) An employee has a private right of action against an employer to enforce the

574 provisions of Subsection (6)(c).

575 (7) Any penalties imposed and collected under this section shall be deposited into the

576 Medicaid Restricted Account created in Section 26-18-402.

577 (8) The failure of a contractor or subcontractor to provide health insurance as required

578 by this section:

579 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,

580 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,

581 Legal and Contractual Remedies; and

582 (b) may not be used by the procurement entity or a prospective bidder, offeror or

583 contractor as a basis for any action or suit that would suspend, disrupt or terminate the design

584 or construction.